APPENDIX A

1. Excerpt from R. S. 5219

Paragraph 3 of the above statute reads, as follows:

> 3. Nothing herein shall be construed to exempt the real property of associations from taxation in any State or in any subdivision thereof, to the same extent, according to its value, as other real property is taxed.

2. Excerpts from California Revenue and Taxation Code

Section 104: "Real estate" or "real property" includes:

(a) The possession of, claim to, ownership of, or right to the possession of land.

(b) All mines, minerals, and quarries in the land, all standing timber whether or not belonging to the owner of the land, and all rights and privileges appertaining thereto.

(c) Improvements.

Section 105: "Improvements" includes:

(a) All buildings, structures, fixtures, and fences erected on or affixed to the land, except telephone and telegraph lines.

(b) All fruit, nut bearing, or ornamental trees and vines, not of natural growth, and not exempt from taxation, except date palms under eight years of age.

(The foregoing sections are derived from former section 3617 of the California Political Code, enacted 1872, reading as follows:

Whenever the terms mentioned in this section are employed in this Title, they are employed in the senses hereafter affixed to them.

First—The term "real estate," includes:

1. The ownership of, claim to, possessions of, or right to the possession of land;

2. All mines, minerals, and quarries in and under the land, and all rights and privileges appertaining thereto:

3. Improvements.

Second—The term "improvements" includes:

1. All buildings, structures, fixtures, fences, and improvements erected upon or affixed to the land;

2. All fruit, nut bearing, or ornamental trees and vines not of natural growth.

Third—The term "personal property" includes everything which is the subject of ownership not included within the meaning of the term "real estate."

Fourth—The term "full cash value" means the amount at which the property would be appraised if taken in payment of a just debt due from a solvent debtor.)

Section 2188: Every tax on improvements is a lien on the taxable land on which they are located, whether they are assessed to the landowner or to some other person.

Section 2188.2: Whenever improvements are owned by a person other than the owner of the land on which they are located, the owner of the improvments or the owner of the land may file with the assessor a written statement before the lien date attesting to their separate ownership, in which event the land and improvements shall not be assessed to the same assessee.

Section 3003: Where delinquent taxes or assessments are not a lien on real property sufficient, in the judgment of the assessor or the board of supervisors, to secure the payment of the taxes or assessments, the county may sue in its own name for the recovery of the delinquent taxes or assessments, with penalties and costs.

Section 5141: If the court finds that the assessment complained of is void in whole or in part, it shall render judgment for the plaintiff for the amount of the taxes paid on so much of the assessment as is found to be void. In such event but only where taxes are paid after the effective date of this act, the plaintiff is entitled to interest on the taxes for which recovery is allowed at the rate of 5 per centum per annum from the date of payment under protest to the date of entry of judgment, and such accrued interest shall be included in the judgment. The taxes paid on so much of the assessment as is not found to be void shall constitute valid taxes which, if paid after delinquency, shall carry penalties, interest and costs.

3. Excerpts from Bank and Corporation Franchise Tax Act of California.

Sec. 4a. The rate of tax on national banking associations and other banks and financial corporations mentioned in Sections 1, 2, and 4 of this act, shall be a percentage equal to the percentage of the total amount of net income, allocable to this State, of every corporation taxable under subdivision (3) of Section 4 of this act, other than public utilities as defined in the Public Utilites Act, for the next preceding calendar year or fiscal years ended during such calendar year, required to be paid to this State as franchise taxes according to or measured by such net income, and required to be paid to this State or its political subdivisions by such corporations as personal property taxes during the preceding calendar year or fiscal years ended in such calendar year; provided, however, that said rate of tax shall not exceed 8 percentum. The percentage of the net income of every corporation taxable under subdivision (3) of Section 4 of this act, other than public utilities as defined in the Public Utilities Act, required to be paid to this State or its political subdivisions in personal property taxes shall be determined by ascertaining the ratio which the total amount of such personal property taxes, less 4 percentum thereof, bears to the total amount of net income of such corporation, allocable to California, increased by the amount of such personal property taxes; provided, however, that if any such corporation sustains a net loss allocable to

California the personal property taxes required to be paid by such corporation to this State or its political subdivisions during the preceding calendar year or fiscal years ended during such calendar year shall be considered for the purpose of determining such ratio only to the extent which such personal property taxes exceed such net loss allocable to California.

The commissioner, after public hearing and opportunity given to examine the data on which his determination is based, shall determine not later than the thirty-first day of December of each year the average percentage of net income above specified, and, within thirty days after his determination, shall mail notice of his determination and the amount of tax payable on the basis of such determination to all banks and financial corporations affected thereby, which are then classified on his records as banks or financial corporations, but such determination shall not be considered a deficiency assessment within the meaning of Section 25 hereof. The data gathered by the commissioner in determining the rate, referred to herein, shall be made available to the taxpayers affected by such determination at the time and in the manner prescribed by regulations adopted by the commissioner.

If it be judicially determined that the rate of tax on any bank or corporation is higher than is authorized by law such bank or corporation shall be relieved of liability for any tax imposed by this act only to the extent of the excess beyond that legally authorized. (Statutes of 1933, p. 871, as amended.)

Sec. 27. (a) If, in the opinion of the commissioner, or the State Board of Equalization, as the case may be, there has been an overpayment of tax, penalty or interest by a taxpayer for any year for any reason, the amount of such overpayment shall be credited against any taxes then due from the taxpayer under this act, and the balance shall be refunded to the taxpayer or its successor through reorganization, merger, or consolidation, or to stockholders upon dissolution. No such credit or refund shall be allowed or made until approved by the State Board of Control. No such credit or refund shall be allowed or made after four years from the last day prescribed for filing the return or after one year from the date of the overpayment, whichever period expires the later, unless before the expiration of such period a claim therefor is filed by the taxpayer, or unless before the expiration of such period the commissioner has certified the overpayment to the State Board of Control for approval of the refunding or the crediting thereof. If (a), the taxpayer has, within the period prescribed in the preceding sentence, agreed in writing, under the provisions of Section 25, to extend the time within which the commissioner may propose an additional assessment, or (b) if the taxpayer has agreed with the United States Commissioner of Internal Revenue for an extension (or renewals thereof) of the period of proposing and assessing deficiencies in federal income tax for any year, the period within which a claim for credit or refund may be filed, or credit or refund allowed or made

if no claim is filed, shall be the period within which the commissioner may make an assessment under such circumstances, except that the provisions of the preceding sentence shall apply to any claim filed, or credit or refund allowed or made, before the execution of such agreements. Insofar as the claim for credit or refund relates to an overpayment on account of the deductibility under Section 8 (e) of a debt as one which became worthless, or an erroneous inclusion of an amount attributable to the recovery of a bad debt, prior tax or delinquency amount under Section 6 (b) (4), due to an adjustment of a bad debt deduction under Section 8 (e), in lieu of the period of limitation prescribed in the second preceding sentence, the period shall be seven years from the date prescribed by law for filing the return for the year with respect to which the claim is made. A refund claim upon which action has become final shall not thereafter be considered a refund claim within the meaning of the foregoing provision except to the extent allowed. Every claim for refund must state the specific grounds upon which the claim is founded.

(b) If the commissioner disallows any claim for refund, he shall notify the taxpayer accordingly. At the expiration of 90 days from the mailing of such notice, the commissioner's action upon the claim shall be final unless within such 90-day period, the taxpayer appeals in writing from the action of the commissioner to the State Board of Equalization. If the commissioner fails to mail notice of action on any refund claim with-

in six months after the claim was filed, the taxpayer may, prior to mailing of notice of action on the refund claim, consider the claim disallowed and appeal to said board. Appeals must be addressed and mailed to the State Board of Equalization at Sacramento, and a copy of the appeal addressed and mailed at the same time to the commissioner at Sacramento. Said board shall hear and determine the same and thereafter shall forthwith notify the taxpayer and the commissioner of its determination. Such determination shall be final upon the expiration of 30 days from the time of such determination unless within such 30-day period the taxpayer or the commissioner files a petition for rehearing with said board, in which event the board's determination shall not become final until the expiration of 30 days from the time the board issues its opinion on said petition.

(c) (1) Interest shall be allowed and paid upon any overpayment in respect of any tax at the rate of 6 percentum per annum as follows:

(A) In the case of a credit, from the date of the overpayment to the date of the allowance of the credit. Any interest allowed on any credit shall first be credited on any taxes due from the taxpayer under this act.

(B) In the case of a refund, from the date of the overpayment to a date preceding the date of the refund warrant by not more than 30 days, such date to be determined by the commissioner.

(2) (A) If the commissioner disallows interest on any claim for refund, he shall notify the taxpayer accordingly. At the expiration of 90 days from the mailing of such notice, the commissioner's action upon the disallowance of such interest shall be final unless within such 90-day period, the taxpayer appeals in writing from the action of the commissioner to the State Board of Equalization. Appeals must be addressed and mailed to the State Board of Equalization at Sacramento, and a copy of the appeal addressed and mailed at the same time to the commissioner at Sacramento. Said board shall hear and determine the same and thereafter shall forthwith notify the taxpayer and the commissioner of its determination. Such determination shall be final upon the expiration of 30 days from the time of such determination unless within such 30-day period the taxpayer or the commissioner files a petition for rehearing with said board, in which event the board's determination shall not become final until the expiration of 30 days from the time the board issues its opinion on said petition.

(B) Within 90 days after the mailing of the notice of the commissioner's action disallowing interest upon any refund claim, or in the case of an appeal to the State Board of Equalization from the disallowance of interest on any refund claim, within 90 days after the mailing of the notice of the board's determination of the appeal, the taxpayer may bring an action against the commissioner on the grounds set forth for interest in such claim for the recovery of the interest.

If the commissioner fails to mail notice of action of disallowance of interest on any refund claim within six months after the interest was claimed, the taxpayer may, prior to mailing of notice of action of disallowance of interest on the refund claim, consider the interest disallowed and bring an action against the commissioner on the grounds set forth for interest in such claim for the recovery of the interest.

(3) A payment not made incident to a bonafide and orderly discharge of an actual liability or one reasonably assumed to be imposed by law, is not an overpayment for the purposes of this subsection and interest is not payable thereon.

(4) If a credit or refund of any part of an overpayment would be barred under Section 27 (a), except for the seven-year limitation therein relating to bad debts, no interest shall be allowed or paid with respect to such part of the overpayment for any period beginning after the expiration of the period of limitation provided in Section 27 (a), other than the seven-year limitation therein relating to bad debts, for filing claim for credit or refund of such part of the overpayment and ending at the expiration of six months after the date on which the claim was filed or, in case no claim was filed and the overpayment was found by the board, ending at the time the appeal was filed with the board.

(d) Any refund or any portion thereof which is erroneously made, and any credit or any portion there-

of which is erroneously allowed, may be recovered, together with interest at the rate of 6 percentum per annum from the date the refund was made or the credit allowed, in an action brought by the commissioner in a court of competent jurisdiction in the County of Sacramento in the name of the people of the State of California, and such actions shall be tried in the County of Sacramento, unless the court, with the consent of the Attorney General or the counsel for the commissioner, orders a change in place of trial. The Attorney General or the counsel for the commissioner must prosecute such action, and the provisions of the Code of Civil Procedure, relating to service of summons, pleadings, proofs, trials, and appeals are applicable to the proceedings herein provided for.

In the event that a tax has been illegally levied against a taxpayer, the commissioner shall set forth on his records the reasons therefor and thereafter shall authorize the cancellation of such tax.

(e) If, after filing a protest or an appeal to the State Board of Equalization, pursuant to Section 25, a taxpayer pays the tax protested, before the commissioner acts upon the protest or the board on the appeal, the commissioner or the board shall treat the protest or the appeal as a claim for refund or an appeal from the denial of a claim for refund filed under this section. (Statutes 1929, p. 31, as amended.)

Sec. 30. (a) No injunction or writ or mandate or other legal or equitable process shall issue in any suit,

action or proceeding in any court against this State or against any officer thereof to prevent or enjoin the assessment or collection of any tax under this act but any taxpayer claiming that the tax computed and levied against it pursuant to Section 24.1 and 25 of this act is void in whole or in part may bring an action against the commissioner for the recovery of the whole or any part of the amount paid. Such action must be filed within four years from the last date prescribed for filing the return or within one year from the date the tax was paid, whichever period expires the later; provided, that no action shall be filed for the recovery of a deficiency assessment unless the taxpayer has made protest to the commissioner of the computation and levy complained of under the provisions of Section 25 hereof or unless the taxpayer has filed a claim for refund for the tax in question, under the provisions of Section 27.

(b) Within 90 days after the mailing of the notice of the commissioner's action upon any refund claim, or in case of an appeal to the State Board of Equalization from the disallowance of any refund claim, within 90 days after the mailing of the notice of the board's determination of the appeal, the taxpayer may bring an action against the commissioner on the grounds set forth in such claim for the recovery of the whole or any part of the amount claimed as an overpayment.

If the commissioner fails to mail notice of action on any refund claim within six months after the claim was filed, the taxpayer may, prior to mailing of notice of action on the refund claim, consider the claim disallowed and bring an action against the commissioner on the grounds set forth in such claim for the recovery of the whole or any part of the amount claimed as an overpayment.

(c) Whenever under the provisions of this section an action is commenced against the commissioner, a copy of the complaint and the summons must be served upon the commissioner or assistant commissioner. A second copy of the complaint and summons must be furnished to the commissioner, but this requirement shall not be considered jurisdictional. At the time the commissioner demurs or answers, he may demand that the action be tried in the Superior Court of the County of Sacramento, which demand must be granted. The Attorney General or the counsel for the commissioner must defend the action. The provisions of the Code of Civil Procedure, relating to pleadings, proofs, trials, and appeals are applicable to the proceedings herein provided for. A failure to begin such action within the time herein specified shall be a bar against the recovery of such taxes. In any such action the courts shall have power to render judgment for plaintiff for any part or portion of the tax, interest, penalties or cost found to be void and so paid by plaintiff upon such assessment.

(d) In all actions now pending against the State Treasurer under the provisions of this act, the commissioner shall be substituted for the State Treasurer by the court wherein the action is pending. This substitution shall not in any way affect the rights of the plaintiff in said action.

(e) If judgment is rendered against the commissioner, amount thereof shall first be credited against any taxes and interest due from the taxpayer under this act and the remainder refunded to the taxpayer or its successor by the State Treasurer on warrant drawn by the Controller.

(f) In any judgment of any court rendered for any overpayment in respect of any tax imposed by this act, interest shall be allowed at the rate of 6 per centum per annum upon the amount of the overpayment, from the date of the payment or collection thereof to the date of allowance of credit on account of such judgment or to a date preceding the date of the refund warrant by not more than 30 days, such date to be determined by the commissioner. (Statutes of 1929, p. 31, as amended.)

APPENDIX B

Excerpt from Reporter's Transcript, Vol. 20, pp. 5504-5.

The Court: What is the status of the litigation in regard to 4A?

Mr. Nelson: The status is this, your Honor: several cases have been filed through the years and are lying there under stipulation. A few months ago a complaint was filed by Bank of America challenging the validity of the taxes levied in 1942, measured by the net income of 1941, which invokes this question. The complaint has been served and the state has pleaded to it by demurrer and motion that we would expect. It has not yet been argued, so it has just reached the demurrer stage.

The Court: Where was it filed?

Mr. Nelson: We filed it in the Superior Court at Sacramento, which is the jurisdiction unless the Commisisoner consents to some other.